

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 20 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CLEVON MCPHERSON,

Defendant - Appellant.

No. 05-10694

D.C. No. CR-05-00280-SYI

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Susan Yvonne Illston, District Judge, Presiding

Submitted September 15, 2006^{**}
San Francisco, California

Before: W. FLETCHER, and RAWLINSON, Circuit Judges, and SELNA,^{***}
District Judge.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

^{***} Honorable James V. Selna, United States District Judge for the Central District of California, sitting by designation.

Defendant-appellant Clevon McPherson appeals his sentence of 51 months imprisonment for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). McPherson argues that the district court erred in calculating the appropriate sentencing guideline range because it miscalculated the number of criminal history points to be attributed to a previous infraction committed as a juvenile. Pursuant to United States Sentencing Guideline § 4A1.2(d)(2)(A), the district court attributed two criminal history points to McPherson's nearly two-year detention at the California Youth Authority ("CYA"). Section 4A1.2(d)(2)(A) provides for the addition of two criminal history points "for each adult or juvenile sentence to confinement of at least sixty days." McPherson contends that the district court erred in applying § 4A1.2(d)(2)(A) because nothing in the record shows that he was actually sentenced to a period of confinement "of at least 60 days." However, McPherson does not contest the fact that he actually spent nearly two years at the CYA.

The length of the sentence may be proved by the actual sentence served. *See United States v. Williams*, 891 F.2d 212, 215 (9th Cir. 1989) ("If a sentence resulted in confinement of at least 60 days, the defendant is given 2 points[.]"); *see also United State v. Booten*, 914 F.2d 1352, 1353 (9th Cir. 1990) (in upholding a two-point assessment the court referenced the amount of time the defendant spent

in confinement). Based on the record before it, the district court did not err in assessing the two points for McPherson's juvenile infraction.

AFFIRMED.